

1 distribution that's described in paragraph
2 two.

3 Q Now earlier His Honor used the
4 term of a sweetener, do you remember that?

5 A Yes.

6 Q Can you think of it in those terms
7 here, this equity piece of the equity sort of
8 a sweetener in order to incentivize the
9 distributor to increase distribution?

10 A Yes. I think that's fair.

11 Q Okay. And the amount of equity
12 here that you explained, the shares
13 themselves, are those voting shares?

14 A I'd have to look at it. I'm not
15 sure if they were voting shares or not. I
16 doubt it was [REDACTED]. I'm sure it
17 wasn't [REDACTED].

18 Q You're sure it wasn't [REDACTED]
19 [REDACTED] in Tennis Channel?

20 A Right.

21 Q But that does raise a question.
22 If you had accepted this equity offer, who

1 would have been the majority owners of Tennis
2 Channel at that point?

3 A Probably whoever the majority
4 owners were before the deal was done I would
5 assume.

6 Q Well, do you know at the time of
7 the '07 MFN offer to you that's in Exhibit 86,
8 what percentage of Tennis Channel was already
9 owned by Dish and DirecTV, do you know?

10 A I think it was about [REDACTED] percent.

11 Q Okay, about [REDACTED] percent?

12 A Yes.

13 Q How much were you being offered?
14 What percentage was being offered to you in
15 this MFN offer?

16 A I would have to look it up. I
17 don't know the exact percentage. I don't
18 recall the exact percentage.

19 Q Is there any way to estimate it?
20 Is there any way in which you'd be comfortable
21 estimating it? I don't want to force you, if
22 you're not.

1 A It would probably be in the
2 analysis that was performed on the equity
3 value.

4 Q Okay. Well, before we move to
5 that, let's just finish the election box
6 quickly.

7 MR. PHILLIPS: If I may, Mr. Bond,
8 if I could ask you not to turn to the pages in
9 that exhibit except the ones that Mr. Carroll
10 refers you to. There's highly confidential
11 information from the Tennis Channel in there
12 and Mr. Bond unfortunately is not one of the
13 people who can see Tennis Channel's highly
14 confidential price information.

15 MR. CARROLL: Your Honor, I
16 haven't done anything like that, but I don't
17 agree with that because everything in the
18 section of the binder that Mr. Phillips is
19 referring to is already in evidence. It's in
20 this record. I don't think the
21 confidentiality restrictions would preclude a
22 witness being examined about evidence in the

1 record.

2 That said, Your Honor, I'm not
3 proposing to do that.

4 JUDGE SIPPEL: Let me be sure that
5 we're on the same wavelength here. Go ahead,
6 Mr. Phillips.

7 MR. PHILLIPS: If Mr. Carroll
8 represents that he's not going to examine him
9 on the confidential price and other highly
10 confidential business information, it's in
11 there. That's fine with me. We've avoided
12 the issue, Your Honor.

13 I just was pointing out and the
14 reason I spoke up is I just noticed that Mr.
15 Bond was looking through it and I wanted to
16 make sure that because there is highly
17 confidential material and he's not a person
18 that is within the zone of highly confidential
19 access. That's the reason that I wanted to
20 speak up.

21 JUDGE SIPPEL: I think it's a
22 perfectly legitimate concern. You've answered

1 it adequately, so let's go on.

2 MR. CARROLL: Okay, I hope we
3 don't have an issue looming later on, but if
4 we do, we can raise it then. I'm not sure
5 it's an issue for this witness.

6 JUDGE SIPPEL: Issue looming?
7 Never mind, never mind.

8 MR. CARROLL: It's a glossary
9 term.

10 (Laughter.)

11 JUDGE SIPPEL: We've already
12 shredded the Paris Treaty. This is going to
13 be the Versailles Treaty. Okay, let's keep
14 going with this witness.

15 BY MR. CARROLL:

16 Q If you go to the last page of
17 Exhibit 86, sir, the MFN offer itself?

18 A Yes.

19 Q The other options just briefly, I
20 asked about the equity carriage already and
21 you've explained that. Option B, [REDACTED]
22 [REDACTED], what was that, sir?

1 A That changed the rate card by
2 introducing [REDACTED] which is set
3 forth on page three and the way that worked is

4 [REDACTED]
5 [REDACTED].

6 So what you see on page three, [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]
13 [REDACTED]

14 Q Hold on one moment.

15 A I'm sorry.

16 Q Let me just finish up [REDACTED]

17 [REDACTED] [REDACTED] you've just
18 described that's on page three of the exhibit,
19 did you understand that was [REDACTED]
20 you were being offered because that was the
21 [REDACTED] that DirecTV had in its contract?

22 A I assume that's correct. It

1 doesn't say that, but it would make sense.

2 Q Okay, and this is a new [REDACTED]
3 [REDACTED] that you were not offered in your
4 original contract in 2005 with Tennis Channel,
5 is that correct?

6 A Yes.

7 Q And what did you decide with
8 respect to [REDACTED]?

9 A We decided to accept that.

10 Q And the next option is Option C, a
11 [REDACTED]. What's that?

12 A That's in the next paragraph it
13 refers to the ability to access the [REDACTED]
14 [REDACTED] of -- actually, let me back
15 up. The next paragraph indicates that Tennis
16 Channel was prepared to [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Q Okay. And what did you decide on

1 that one?

2 A We declined this.

3 Q And why was that?

4 A I believe it was because [REDACTED]

5 [REDACTED] didn't work for us.

6 Q You would have had to [REDACTED]

7 [REDACTED]?

8 A We would have had to meet [REDACTED]

9 [REDACTED]

10 [REDACTED] that would have been difficult
11 for us to meet at that time.

12 Q And bandwidth. Does [REDACTED]

13 [REDACTED] impact bandwidth in any way?

14 A Yes. Each [REDACTED]

15 [REDACTED] much more bandwidth, much
16 more system resources than [REDACTED].

17 Q Option D says [REDACTED]

18 [REDACTED].

19 A Yes.

20 Q What is that and what decision did
21 you make on that?

22 A Option D offered an option to

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED] And that was
6 not covered in our prior agreement. And we
7 accepted that provision.

8 Q Okay. And with respect -- now I'm
9 going to go back to Option A. With respect to
10 the equity carriage incentive. Did you do
11 another analysis in this year, 2007, similar
12 to the analysis that was done the previous
13 year 2006?

14 A Yes.

15 Q And when I say "you" I meant
16 Comcast.

17 A Yes.

18 Q Which group of Comcast did this
19 analysis in 2007?

20 A It was the same group of people
21 and more or less the same process that was
22 done previously. I asked Jenn to analyze and

1 she worked with --

2 Q You say Jenn --

3 A Jennifer Gaiski. I asked Jennifer
4 Gaiski to analyze it and she worked with Joe
5 Donnelly to analyze the cost benefits in the
6 same way they had done in 2006.

7 Q All right, and Mr. Donnelly is in
8 Mr. Shell's group, correct?

9 A Yes.

10 Q On the programming side?

11 A Yes.

12 Q And if you would turn to in the
13 white binder, it's Comcast Exhibit 66, it's
14 behind the first blue tab, blue sheet that is
15 behind Tab C.

16 JUDGE SIPPEL: This is Comcast 66?

17 MR. CARROLL: Comcast Exhibit 66.

18 The title should say "The Tennis Channel MFN
19 Equity for Carriage Offer, July 2007," Your
20 Honor.

21 THE WITNESS: I'm looking at it.

22 BY MR. CARROLL:

1 Q This is already in evidence. Can
2 you confirm for us that this Exhibit 66 sets
3 forth the documentation of the analysis that
4 the programming group did of the equity for
5 carriage offer that Tennis Channel made in
6 July of 2007?

7 A Yes, it is.

8 Q And can you summarize for us what
9 the results of the analysis showed this time?

10 A It is a very similar analysis. It
11 looked at the valuation of the equity as
12 against the license fees that would be paid to
13 The Tennis Channel. And essentially the
14 conclusion was, although the equity value was
15 higher in this case, there was more equity.

16 The judgment was that the value of
17 the equity did not come close to the cost of
18 the increased license fees and thus we
19 declined the offer as we had in 2006.

20 Q And when you declined the offer,
21 how did you do that? How did you let Tennis
22 Channel know you were declining the offer?

1 A We put the checks in the boxes as
2 you see in Exhibit 86 and returned it to,
3 presumably returned it to Randy Brown as was
4 instructed on the document.

5 Q Randy Brown at Tennis Channel?

6 A Randy Brown at Tennis Channel.

7 Q Did you -- after you sent the
8 election form back to Tennis Channel this time
9 on the MFN, did you get a phone call from Mr.
10 Solomon complaining in any way about the
11 decision he made?

12 A No.

13 Q Did Mr. Solomon call you and
14 accuse you in any way of having discriminated
15 against him for having made the elections that
16 you made?

17 A No.

18 Q In analyzing this MFN offer that
19 we just looked at in 2007, the offer that was
20 set forth in Comcast Exhibit 86, was it part
21 of your analysis in any way that you gave
22 carriage to Golf and Versus and that you owned

1 Golf and Versus?

2 A No.

3 Q Was that part of your process in
4 any way in analyzing The Tennis Channel MFN
5 offer?

6 A No.

7 Q Did the fact that you didn't own
8 equity in Tennis Channel yet, was that somehow
9 relevant to the way you analyzed the offer
10 they made to you?

11 A No.

12 Q In fact, they were making you an
13 offer of equity in themselves, correct?

14 A Yes, and we declined it.

15 Q Now, I forgot to cover one point.
16 You had said that the analysis set forth in
17 Comcast Exhibit 66 might enable you to answer
18 the question I had asked earlier about, what
19 percentage of equity would you have gained in
20 Tennis Channel if you had accepted this?

21 A Yes, it's [REDACTED] percent fully
22 diluted.

1 JUDGE SIPPEL: Where are you
2 finding that?

3 THE WITNESS: This is on page
4 five.

5 BY MR. CARROLL:

6 Q Page five of Exhibit 66?

7 A Yes. Page five of Exhibit 66.
8 The preferred shares would have equated to
9 [REDACTED] percent ownership. The warrants would
10 have increased that by another [REDACTED] percent.
11 So it looks like [REDACTED] percent.

12 Q So if you exercise the warrants in
13 addition to the stock that was being offered,
14 you would have gained [REDACTED] percent and it says
15 on a fully diluted basis. Fully diluted
16 basis, what does that mean?

17 A That means that there are other
18 shares outstanding that might be issued such
19 as to employees and such. That's taken into
20 account in the denominator.

21 Q In other words, fully diluted
22 means after giving effect to your exercise of

1 anything and counting all the other shares out
2 there. That would have been your percentage?

3 A Yes.

4 Q So [REDACTED], if you added that to
5 DirecTV's share, I believe you said together
6 they were about [REDACTED] percent, is that right?

7 A Yes.

8 Q That would have meant that the
9 three of you, DirecTV, Dish, and Comcast had
10 you made a different election here, would have
11 owed [REDACTED] of Tennis Channel, is that
12 right?

13 A Yes, that looks like that would be
14 right.

15 JUDGE SIPPEL: Be careful how you
16 jump into that conclusion because these are
17 preferred shares and warrants. They're not
18 volume stock, as I see it. Maybe there were
19 voting rights that went along with it. But I
20 didn't look at it that closely, usually on
21 their face value preferred shares do not carry
22 voting rights.

1 THE WITNESS: It depends.

2 JUDGE SIPPEL: Yes, it does.

3 THE WITNESS: I can look at
4 Exhibit 86 and see if that's clarified.

5 BY MR. CARROLL:

6 Q Did the fully diluted calculation
7 include both voting and preferred shares? Is
8 that what fully diluted means?

9 A Yes.

10 MR. PHILLIPS: Your Honor, I know
11 this has been going on for some time, but I
12 just want to make sure that Mr. Carroll has
13 held the same standard that he held me to. I
14 would ask him not -- to sort of shy away from
15 all the -- making nothing but leading
16 questions and maybe we can have --

17 JUDGE SIPPEL: Well, I appreciate
18 you restraining yourself on that. That's all
19 I can say.

20 MR. PHILLIPS: As I say, I know I
21 did it also with Mr. Solomon, but Mr. Carroll
22 did correct me with it and I just --

1 JUDGE SIPPEL: There's nothing I
2 can do to control that, unless you raise an
3 objection.

4 MR. PHILLIPS: I am raising an
5 objection, but --

6 JUDGE SIPPEL: I will caution Mr.
7 Carroll be careful about leading the witness.
8 I'm cautioning you to be careful about leading
9 the witness.

10 MR. CARROLL: I appreciate that.
11 The few times that it's happened, I hope it's
12 only been a few. It's only been for the sake
13 of trying to move through material and make it
14 quicker. But I'm happy to ask him more
15 directly.

16 BY MR. CARROLL:

17 Q Do you know whether fully diluted
18 as a term of art in the industry means
19 including any common stock, including all
20 shares of stock whether preferred or common,
21 do you know that, yes or no?

22 A Yes.

1 MR. PHILLIPS: I don't think we're
2 shying away from it.

3 JUDGE SIPPEL: I will caution you
4 again though, Mr. Bond, don't be perusing that
5 document that way.

6 If there is a provision in there,
7 I'm going to ask Mr. Carroll this, if there is
8 a provision in that document, maybe you and
9 somebody on your team can find it quicker than
10 I can, but that answers that question that I
11 have about voting shares, the voting rights.
12 You can attach voting rights to preferred
13 shares. It can be done, but normally
14 preferred shares are preferred shares and
15 common stock is common stock with voting
16 rights.

17 BY MR. CARROLL:

18 Q Do you know the answer to that
19 question, Mr. Bond?

20 A I don't. The document refers to ■
21 ■ that probably
22 would answer the question. I'm not really a

1 securities lawyer.

2 Q When you say the document refers
3 to [REDACTED], what document
4 are you referring to?

5 A Exhibit 86.

6 Q Where is that reference for His
7 Honor?

8 A The top of page two, it says [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 JUDGE SIPPEL: That doesn't
15 address the question of voting rights. All
16 that is saying is that --

17 THE WITNESS: No, you're right.
18 I'm just assuming that that question is
19 probably answered in that document.

20 JUDGE SIPPEL: That's possible.

21 THE WITNESS: That's all I was --

22 JUDGE SIPPEL: So we just don't

1 know the answer to that. So the significance
2 of these numbers that you're calculating, I
3 don't want to say significance, what I'm
4 saying is it's apples and oranges. If it's
5 established that all the shares you're talking
6 about have voting rights, then that's in the
7 same basket, but if some have voting rights
8 and some don't, then you've got to put them in
9 separate baskets for anything that you might
10 do with those numbers.

11 MR. CARROLL: For purpose of
12 voting issues, I agree, Your Honor.

13 JUDGE SIPPEL: Well, all right.
14 That's what's controlling, usually. It's a
15 good start to controlling.

16 MR. CARROLL: I don't disagree. I
17 don't disagree at all. And Your Honor, we
18 will endeavor separately, not with Mr. Bond,
19 to see if we can shed light on that question
20 so that Your Honor would have that
21 information.

22 JUDGE SIPPEL: I think you would

1 want to have that information, too.

2 MR. CARROLL: If I had it right
3 now, I would give it to you.

4 JUDGE SIPPEL: I appreciate that.
5 I think the record will be a bit clearer with
6 that information. But right now I think you -
7 - well, let's keep going. I'm sorry.

8 BY MR. CARROLL:

9 Q And again, to finish this out, you
10 understood that the equity that was being
11 offered to you, whatever it amounted to, was
12 being offered to you under an MFN because of
13 the transaction DirecTV did. Is that correct?

14 A Yes.

15 Q In the year following your
16 declining this MFN offer, did you experience
17 any loss of customers to DirecTV because of
18 it's contract it had with Tennis Channel?

19 A No.

20 Q Were there any reports you
21 received from the field on that issue?

22 A No.

1 Q If that had happened would you
2 have expected to hear about it?

3 A Yes.

4 Q How so?

5 A It would have been requests coming
6 up from the field to reposition Tennis Channel
7 because somehow the packaging was creating a
8 competitive problem.

9 Q Had there been other products over
10 the years that DirecTV had, not with Tennis
11 Channel but with anyone else, that had raised
12 that issue for you, namely the issue of losing
13 subscribers?

14 A There were services that DirecTV
15 had exclusively that could cause -- that did
16 cause competitive issues such as the Sunday
17 Ticket package.

18 Q And very quickly for this record
19 what are you referring to when you say the
20 Sunday Ticket package?

21 A The Sunday Ticket package is an
22 out of market sports package created by the

1 NFL. It refers to the right of the subscriber
2 to the Sunday Ticket package to receive not
3 just the local games that that customer would
4 ordinarily see in his or her marketplace, but
5 all the NFL games that are played across the
6 nation at one time. And this is and had been
7 a package that DirecTV held exclusively.

8 Q And were there issues you learned
9 about competitive issues that were created
10 because of the exclusive nature of Sunday
11 Ticket's relationship with DirecTV?

12 A Yes. That's an obviously very
13 popular package. I think DirecTV has a couple
14 million subscribers to that package. And it
15 also helped position DirecTV as a premiere
16 leader in sports programming.

17 Q Did you experience any issues
18 comparable to that with respect to Tennis
19 Channel?

20 A No.

21 Q Now I want to roll forward in time
22 to 2008 and 2009. Does there come to be a

1 point when you receive another proposal from
2 Tennis Channel?

3 A Yes.

4 Q What year is that?

5 A 2009.

6 Q 2009. Do you remember when it was
7 in 2009?

8 A In May.

9 Q In May. And is this an MFN offer
10 or something else?

11 A No, this is not an MFN offer.
12 This is simply a proposal.

13 Q And do you remember when in May
14 2009 you received the proposal?

15 A The 12th of May.

16 Q The 12th of May. Was there some
17 event that occurs on the 12th of May?

18 A There is a meeting that we have on
19 the 12th of May with The Tennis Channel
20 representatives.

21 Q And before I ask about that
22 meeting which I want to do, tell me about the

1 lead up to that meeting, if there is any lead
2 up to that meeting?

3 A So in the early part of the year
4 Ken Solomon had approached my boss at the
5 time, Steve Burke, had called him to talk
6 about Tennis Channel and essentially say that
7 Tennis Channel wanted increased distribution.
8 So Steve Burke, Mr. Burke then forwarded on to
9 me to talk with Ken. And -- Ken Solomon --
10 and I had several conversations with Ken in
11 the first part of the year about it. And he
12 basically said to me that notwithstanding our
13 agreement for the sports tier, he said that he
14 wasn't doing sports tier deals any more, that
15 he hadn't done a sports tier deal since he
16 became a CEO, the CEO of The Tennis Channel,
17 that the sports tier deals done previously
18 were a mistake and that he felt that Comcast
19 should increase the distribution of The Tennis
20 Channel.

21 We talked about it at some length.
22 I explained to him that increasing the

1 distribution would increase the license fees
2 for Comcast without an offsetting benefit.
3 And we talked back and forth about it and then
4 he sent a letter in April, a relatively
5 aggressive and threatening letter, claiming
6 that we hadn't lived up to the spirit of our
7 agreement. We responded to that letter in
8 writing and then agreed to meet, which was the
9 May meeting that we previously discussed.

10 Q Okay, and the discussions that you
11 referred to that preceded the exchange of
12 letters, what month, what years were those
13 discussions?

14 A March.

15 Q March of?

16 A March of 2009.

17 Q So did you receive the proposal, a
18 new proposal before the meeting in May of
19 2009?

20 A No.

21 Q So what happened at the meeting in
22 May? Where was the meeting? Who is there and